

## SPONSORED RESEARCH AGREEMENT

THIS SPONSORED RESEARCH AGREEMENT (the "Agreement"), effective as of the \_\_\_\_ day of \_\_\_\_\_, 200\_ (the "Effective Date"), is by and between \_\_\_\_\_ [Company Name] a \_\_\_\_\_ [Company's state of incorporation] business corporation (hereinafter referred to as "Sponsor") and LEHIGH UNIVERSITY, a Pennsylvania non-profit corporation (hereinafter referred to as "University").

### WITNESSETH:

WHEREAS, the research program contemplated by this Agreement is of mutual interest and benefit to University and to Sponsor, will further the educational and research objectives of University in a manner consistent with its status as a non-profit, tax-exempt educational institution, and may derive benefits for both Sponsor and University through research findings, inventions, and/or discoveries;

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained and intending to be legally bound, the parties hereto agree to the following:

### Article 1 - Definitions

As used herein, the following terms shall have the following meanings:

- 1.1 "Project" shall mean the project titled \_\_\_\_\_ as described in Appendix A attached hereto and incorporated by reference as a material part of this Agreement, under the direction of the Principal Investigator.
- 1.2 "Agreement Term" is from the Effective Date through \_\_\_\_\_ [date].
- 1.3 "University Intellectual Property" shall mean individually and collectively all inventions, improvements and/or discoveries which, in performance of the Project, are conceived and/or made solely by one or more employees of University, whether patentable, copyrightable or not.
- 1.4 "Joint Intellectual Property" shall mean individually and collectively all inventions, improvements and/or discoveries which, in performance of the Project, are conceived and/or made jointly by one or more employees of University and by one or more employees of Sponsor, whether patentable, copyrightable or not.
- 1.5 "Sponsor Intellectual Property" shall mean individually and collectively all inventions, improvements and/or discoveries which, in performance of the Project, are conceived and/or made solely by one or more employees of Sponsor, whether patentable, copyrightable or not.
- 1.6 "Principal Investigator" shall mean the individual(s) identified as such on Appendix A

hereto, who is/are the University faculty member(s) responsible for supervision and administration of the Project.

## **Article 2 – Conduct of Research**

- 2.1 University shall use reasonable efforts to commence the Project promptly after the Effective Date and to conduct the Project substantially in accordance with the terms and conditions of this Agreement. Sponsor acknowledges that University and the Principal Investigator must conduct the Project in a manner consistent with University's educational and research missions. Anything in this Agreement to the contrary notwithstanding, Sponsor and University may at any time amend the Project by mutual written agreement signed by their authorized representatives.
- 2.2 In the event that the Principal Investigator becomes unable or unwilling to continue Project, and a mutually acceptable substitution is not available, University and/or Sponsor shall have the option to terminate said Project, subject to the provisions of Article 9, by giving written notice to the other party of such termination.
- 2.3 Sponsor shall promptly provide University with such information or documents of whatever form or nature, or undertake such actions, as University may reasonably require in order to conduct the Project.

## **Article 3 - Reports and Conferences**

- 3.1 Project reports will be provided by University to Sponsor as may be set forth on Appendix A, and a final report will be submitted by University at the conclusion of the Agreement Term or earlier termination of this Agreement.
- 3.2 During the Agreement Term, representatives of University will meet with representatives of Sponsor at such reasonable times and places as may be set forth in Appendix A to discuss the progress and results of, as well as ongoing plans or changes for, the Project.

## **Article 4 - Costs, Billings and Other Support**

- 4.1 It is agreed to and understood by the parties hereto that except as may be otherwise agreed by the parties in writing, total costs to Sponsor for the Project hereunder shall not exceed the sum of \_\_\_\_\_ (\$\_\_\_\_\_).
- Payment to University shall be made by Sponsor according to the following schedule:

\$\_\_\_\_\_ on \_\_\_\_\_ [date]  
\$\_\_\_\_\_ on \_\_\_\_\_ [date]  
\$\_\_\_\_\_ on \_\_\_\_\_ [date]

- 4.2 Anything herein to the contrary notwithstanding, in the event of early termination of this Agreement by either party, Sponsor shall pay all costs and noncancellable

commitments incurred by University through and including the date of termination as provided in Article 9.3.

- 4.3 University shall retain title to all equipment, materials, and supplies purchased and/or fabricated by it with funds provided by Sponsor under this Agreement.
- 4.4 Any sums due and owing by Sponsor to University shall bear interest at the rate of 18% per annum from the date due until paid. Sponsor shall be liable for any and all costs and expenses incurred by University in enforcing this Agreement.

## **Article 5 – Publicity and Use of Name**

Sponsor shall not use the name of University, the Principal Investigator, or any member of University's Project staff, in any publicity, advertising or news release without the prior written approval of the University's Director of the Office of Research and Sponsored Programs and the Vice President for University Relations or their authorized designees.

## **Article 6 - Publications**

Sponsor recognizes that under University policy, the results of University projects, including the Project, must be publishable and agrees that the Principal Investigator and the researchers engaged in the Project shall be permitted to present at symposia, national or regional professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of the Project, provided however, that Sponsor shall have been furnished copies of any proposed publication or presentation at least thirty (30) days in advance of the submission of such proposed publication or presentation to a journal, editor or other third party. Sponsor shall have thirty (30) days after receipt of said copies to request a delay in such proposed presentation or proposed publication for the sole reason that Sponsor believes there is patentable subject matter which needs protection. In the event that Sponsor timely makes such a request for delay by giving written notice to University, the Principal Investigator or researcher(s) shall refrain from making such publication or presentation for not more than ninety (90) days from date of receipt of such objection in order for University to file patent application(s) with the United States Patent and Trademark Office and/or foreign patent office(s) directed to the patentable subject matter contained in the proposed publication or presentation.

## **Article 7 - Intellectual Property Ownership and Protection**

- 7.1 Principal Investigator shall provide to University and Sponsor a complete written disclosure of any University Intellectual Property or Joint Intellectual Property conceived and/or made during the Agreement Term in performance of the Project. Sponsor shall advise University in writing, no later than thirty (30) days after receipt of such disclosure, whether it requests University to file and prosecute a patent, copyright, or other intellectual property application related to such University Intellectual Property or Joint Intellectual Property. If Sponsor does not request University to file and prosecute such patent applications (or decides not to continue with prosecution or maintenance of applications), University may proceed (or continue) with such

preparation and prosecution at its own cost and expense; but such patent applications shall be excluded from Sponsor's option under Article 8.

- 7.2 University shall control the preparation and prosecution of all patent applications and the maintenance of all patents related to University Intellectual Property or Joint Intellectual Property. Sponsor shall reimburse University upon receipt of invoice for all documented expenses incurred in connection with the filing and prosecution of the patent applications and maintenance of patents that Sponsor has requested University to prosecute under Article 7.1.
- 7.3 The preparation, prosecution, and maintenance of copyright, trademark and other intellectual property applications for the University Intellectual Property shall also be subject to the provisions of this Article 7.
- 7.4 All rights and title to University Intellectual Property shall belong to University and shall be subject to the terms and conditions of this Agreement.
- 7.5 Joint Intellectual Property shall be jointly owned by the parties and shall be subject to the terms and conditions of this Agreement.
- 7.6 All rights and title to Sponsor Intellectual Property shall belong to Sponsor and shall not be subject to the terms and conditions of this Agreement.

#### **Article 8 – Option to License Intellectual Property**

- 8.1 In consideration of Sponsor's funding of the Project and payment for intellectual property expenses as provided for in Article 7, University grants Sponsor a first option to negotiate to acquire a royalty-bearing license to practice University Intellectual Property. University and Sponsor will negotiate in good faith to determine the terms of a license agreement as to each item of University Intellectual Property for which Sponsor has agreed to make payment for intellectual property expenses as provided for in Article 7. If Sponsor and University fail to execute a license agreement within six (6) months after disclosure of the University Intellectual Property to Sponsor or if Sponsor fails to make payment for intellectual property expenses as provided for in Article 7, University shall be free to license the University Intellectual Property to any party upon such terms as University deems appropriate, without any further obligation to Sponsor.
- 8.2 Any license granted to Sponsor pursuant to this Article shall be subject, if applicable, to the rights of the United States government reserved under Public Laws 96-517, 97-256 and 98-620, codified at 35 U.S.C. 200-212, and any regulations issued thereunder.

#### **Article 9 – Agreement Term and Termination**

- 9.1 This Agreement shall become effective upon the Effective Date and shall continue in effect for the Agreement Term unless sooner terminated in accordance with the provisions of this Article. The parties hereto may, however, extend the Agreement Term

for additional periods as desired under mutually agreeable terms and conditions which the parties shall reduce to writing and sign. Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party.

- 9.2 In the event that either party hereto shall commit any breach of or default in any of the terms or conditions of this Agreement, and also shall fail to remedy such default or breach within twenty (20) days (except with respect to a default or breach relating to the insurance requirements of Article 11 hereof, for which the cure period shall be one (1) business day) after receipt of written notice thereof from the other party hereto, the party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other party to such effect, and such termination shall be effective as of the date of the receipt of such notice.
- 9.3 In the event of termination of this Agreement prior to the completion of the Agreement Term, whether for breach or for any other reason whatsoever, University shall be entitled to retain from the payments made by Sponsor prior to termination University's reasonable costs of concluding work in progress on the Project. Allowable costs include, without limitation, all costs or noncancellable commitments incurred prior to the receipt, or issuance, by University of the notice of termination, and the full cost of each employee, student and faculty member supported under the Project through the end of such commitments. In the event of termination, University shall submit a final report of all costs incurred and all funds received under this Agreement within sixty (60) days after the effective termination date. The report shall be accompanied by a check in the amount of any excess of funds advanced over costs and allowable commitments incurred. In case of a deficit of funds, Sponsor shall pay University the amount needed to cover costs and allowable commitments incurred by University under this Agreement.
- 9.4 Termination of this Agreement by either party for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination of this Agreement. Furthermore, no termination or expiration of this Agreement, however effectuated, shall release the parties hereto from their respective rights and obligations under Articles 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 19, which such Articles shall survive in their entirety any termination or expiration of this Agreement.

#### **Article 10 - Disclaimer of Warranties; Indemnification**

- 10.1 ANY AND ALL RESULTS OF THE PROJECT, REPORTS, INTELLECTUAL PROPERTY OR OTHER MATERIALS PROVIDED BY UNIVERSITY UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS. UNIVERSITY MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROJECT RESULTS, REPORTS, INTELLECTUAL PROPERTY OR ANY OTHER MATERIALS. UNIVERSITY MAKES NO WARRANTIES OF ANY KIND WITH RESPECT TO FREEDOM

FROM PATENT, TRADEMARK, COPYRIGHT OR TRADE SECRET INFRINGEMENT ARISING FROM THE USE OF THE PROJECT RESULTS, REPORTS, INTELLECTUAL PROPERTY OR OTHER MATERIALS PROVIDED HEREUNDER. UNIVERSITY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES SUFFERED BY SPONSOR OR ANY OTHER PARTY RESULTING FROM THE PROJECT OR THE USE OF ANY PROJECT RESULTS, REPORTS, INTELLECTUAL PROPERTY OR OTHER MATERIALS.

- 10.2 Except to the extent caused by the sole negligence of any of the Indemnified Persons (as hereinafter defined), Sponsor shall defend, indemnify and hold harmless University, its trustees, officers, faculty, students, employees, subsidiaries, affiliates and agents (hereinafter referred to collectively as the "Indemnified Persons") from and against any and all liability, claims, lawsuits, losses, damages, costs or expenses (including without limitation attorneys' fees), which the Indemnified Persons may hereafter incur or be required to pay as a result of: (a) Sponsor's use of the results of Project or any University Intellectual Property, Joint Intellectual Property, or Sponsor Intellectual Property; or (b) any breach of this Agreement; or (c) any act or omission of Sponsor, its employees, subsidiaries, affiliates, contractors, licensees or agents. University shall notify Sponsor upon learning of the institution or threatened institution of any such liability, claims, lawsuits, losses, damages, costs and expenses and University shall cooperate with Sponsor as reasonable in the defense or settlement thereof at Sponsor's request and expense.

## **Article 11 - Insurance**

- 11.1 Sponsor shall carry the following insurance coverage with companies licensed to do insurance business in the state of Pennsylvania and acceptable to University: Commercial General Liability, including Contractual Liability and Completed Operations/Products Liability coverage, at the minimum limit of \$5,000,000 per project/per occurrence; Automobile Liability at \$1,000,000 Combined Single Limit per occurrence; Workers' Compensation and Employer's Liability coverage at the statutory limits; [and *Professional Liability coverage, including Architects and Engineers coverage at the minimum limit of \$5,000,000 per project/per occurrence (retroactive date prior to work; extended reporting period of 36 months)*]. If the nature and/or scope of the Project justify it, University may require Sponsor to provide evidence of higher coverage limits. The procuring of insurance required under this Article shall not relieve Sponsor of any obligation or liability assumed under this Agreement nor of any obligation or liability imposed by operation of law.
- 11.2 Prior to the University's commencement of the Project pursuant to this Agreement, Sponsor shall furnish University with proof of insurance, satisfactory to University in its sole discretion, evidenced by duly authenticated certificates of insurance, as well as satisfactory proof of payment of premiums, delivered to University, which certificates shall show the insurance type, amount, class of operations covered, effective dates, and dates of expiration of policies. Such certificates shall evidence that University has been

named as an Additional Insured on all such policies and shall also contain the following statement or its substantial equivalent:

"The insurance covered by this certificate will not be canceled or materially altered, except after thirty (30) days written notice has been received by Lehigh University."

#### **Article 12 – Independent Contractor**

In the conduct of the Project hereunder, University shall be deemed to be and shall be an independent contractor. Neither party is authorized or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty or representation as to any matter. Neither party shall be bound by the acts or conduct of the other.

#### **Article 13 – Compliance with Laws**

Sponsor shall comply with all laws, regulations and other legal requirements applicable to Sponsor in connection with this Agreement, including but not limited to any legal requirements applicable to Sponsor's use of the results of the Project or any University Intellectual Property and laws controlling the export of technical data, computer software, laboratory prototypes, and all other export controlled commodities.

#### **Article 14 - Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of laws doctrine of such state.

#### **Article 15 - Arbitration**

In the event of any conflict or claim arising out of or relating to any provision of this Agreement or breach thereof, the parties shall make a good faith effort to settle such conflict amicably between themselves. Any such conflict which the parties are unable to resolve shall be settled in accordance with the rules of the American Arbitration Association with the provision that any issues pertaining to patent validity shall be determined in a court of competent jurisdiction. The award or decision shall be rendered by a majority of an arbitration panel consisting of three members, one of whom shall be appointed by University, one of whom shall be appointed by Sponsor and the third of whom shall be the chairperson of the panel and appointed by mutual agreement of said two party-appointed arbitrators. Such arbitration proceedings shall be conducted in Bethlehem, Pennsylvania. The award or decision through arbitration shall be binding upon the parties and may be incorporated into and thereupon enforced as an order of a court of competent jurisdiction.

#### **Article 16 – Notices, Invoices, and Payments**

Notices, invoices, communications and payments hereunder shall be deemed made if given in writing and addressed to the party to receive such notice, invoice, communication or payment at

the address given below, or such other address as may hereafter be designated by notice in writing:

If to Sponsor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to University:

Office of Research and Sponsored Programs  
Att'n: Director  
Lehigh University  
526 Brodhead Avenue  
Bethlehem, PA 18015

With a copy to:  
Office of the General Counsel  
Lehigh University  
27 Memorial Drive West  
Bethlehem, PA 18015

#### **Article 17 - Force Majeure**

In the event that either party is unable, wholly or in part, to carry out its obligations under this Agreement by reason of acts of God or public enemy, wars, insurrections, civil disturbances, epidemics, labor disputes, failure of government approval, accidents, failure of utilities, material shortages, fires, storms, floods and any other causes, whether of the kind enumerated herein or otherwise, not within the control of the party unable to perform, then the obligations of this Agreement shall be suspended during the reasonable continuance of any inability so caused.

#### **Article 18 – Non-Discrimination**

University and Sponsor shall not discriminate against any employee or applicant for employment because of race, color, sex, sexual preference, age, religion, national origin, disability, or because he or she is a disabled veteran or veteran of the Vietnam Era.

#### **Article 19 - Assignment**

This Agreement shall not be assigned by either party without the prior written consent of the other party hereto. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the parties.

#### **Article 20 - Agreement Modification**

Any agreement to change the terms of this Agreement in any way shall be valid only if the change is made in writing and signed by a duly authorized representative of each party hereto.

#### **Article 21 - Entire Agreement**



This Agreement constitutes and expresses the entire agreement of the parties hereto with reference to the subject matter hereof, with all prior promises, undertakings, representations, agreements, understandings and arrangements relative thereto having been herein merged into this Agreement

IN WITNESS WHEREOF the parties have caused this Agreement to be executed, each by its duly authorized representative, to be effective as of the Effective Date defined herein.

**SPONSOR:**

\_\_\_\_\_

By:\_\_\_\_\_

Title:\_\_\_\_\_

Date:\_\_\_\_\_

**LEHIGH UNIVERSITY:**

\_\_\_\_\_

By:\_\_\_\_\_

Title: \_\_\_\_\_

Date:\_\_\_\_\_

APPENDIX A  
to  
Sponsored Research Agreement

PROJECT DESCRIPTION  
&  
ADDITIONAL INFORMATION ON CONDUCT OF PROJECT